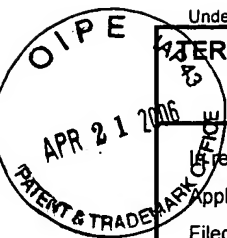


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# **TERMINAL DISCLAIMER TO OBVIATE A PROVISIONAL DOUBLE PATENTING REJECTION OVER A PENDING SECOND APPLICATION**

Docket Number (Optional)

AUS920030478US1

Instant Application of: DeWitt, Jr. et al.

Application No.: 10/674,604

Filed: September 30, 2003

For: Method and Apparatus for Selectively Counting Instructions and Data Accesses

The owner\*, International Business Machines Corporation, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173 as shortened by any terminal disclaimer filed prior to the grant of any patent granted on pending second Application Number 10/675,776, filed on 09/30/2003, of any patent on the pending second application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the second application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

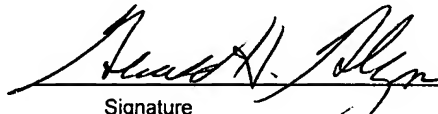
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on the second application, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that any such granted patent: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

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2. ☒ The undersigned is an attorney or agent of record.

 4/17/04  
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Gerald H. Glanzman

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972-385-8777

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Terminal disclaimer fee under 37 CFR 1.20(d) is included.

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